

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCEL COOK,

Petitioner,

v.

Case No. 2:21-CV-11934
Honorable Nancy G. Edmunds

JONATHAN HEMINGWAY,

Respondent.

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OPINION AND ORDER DISMISSING AS DUPLICATIVE
THE PETITION FOR A WRIT OF HABEAS CORPUS

Marcel Cook, (“Petitioner”), incarcerated at the Federal Correctional Institution in Milan, Michigan, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner was convicted in the United States District Court for the Northern District of Illinois for possessing with intent to distribute crack cocaine in violation of 21 U.S.C. § 841(a)(1) and sentenced to 168 months in prison. See *U.S. v. Cook*, 500 F. App’x 537 (7th Cir. 2013). In his petition, filed *pro se*, petitioner seeks a reduction of his sentence under the First Step Act of 2018

Petitioner previously filed a petition for writ of habeas corpus, which challenges the same conviction and sentence and seeks the same sentence reduction under the First Step Act. That petition remains pending before Judge Gershwin A. Drain. See *Cook v. Hemingway*, No. 2:21-CV-11711 (E.D. Mich.)(Drain, J.). No decision has been rendered in that case.

Petitioner has now filed the current petition, in which he again seeks a sentence reduction pursuant to the First Step Act.

The petition is subject to dismissal because it is duplicative of petitioner's pending habeas action in Case No. 21-cv-11711.

I. Discussion

A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999)(internal citations omitted). Petitioner's current habeas petition is subject to dismissal as being duplicative of his still pending first habeas petition, because both cases seek the same relief. *Id.*; *see also Davis v. U.S. Parole Com'n*, 870 F.2d 657 (Table), No. 1989 WL 25837, *1 (6th Cir. Mar. 7, 1989)(district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the petition is essentially the same as the earlier petition); *Warren v. Booker*, No. 06-CV-14462-DT, 2006 WL 3104696, at *1 (E.D. Mich. Oct. 31, 2006)(same). The instant petition challenges the same conviction and sentence and seeks the same sentence reduction as the petition in the case pending before Judge Drain. Accordingly, this petition for a writ of habeas corpus will be dismissed. The dismissal is without prejudice to petitioner filing a motion to amend the petition in his pending habeas case.

II. ORDER

IT IS ORDERED that the petition is SUMMARILY DISMISSED. Because a certificate of appealability is not needed to appeal the denial of a habeas petition filed under § 2241, *Witham v. United States*, 355 F.3d 501, 504 (6th Cir. 2004), petitioner need

not apply for one with this Court or with the Sixth Circuit before filing an appeal from the denial of his habeas petition.

s/ Nancy G. Edmunds

NANCY G. EDMUNDS
UNITED STATES DISTRICT JUDGE

Dated: August 29, 2021

I hereby certify that a copy of the foregoing document was served upon counsel of record by electronic and/or ordinary mail.

s/ Lisa Bartlett
Case Manager